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MICHAEL J. WAHOSKE
(612) 340-8755

March 4, 1985

The Honorable Paul A. Magnuson
United States District Court
for the District of Minnesota
Federal Courts Building
316 N. Robert Street
St. Paul, Minnesota 55101

Re: Reilly Tar & Chemical Corporation v. United States of America, et al.

Dear Judge Magnuson:

Enclosed please find two copies of the following:

(1) Complaint for Declaratory Judgment and Injunctive Relief.*/

(2) Notice of Motion and Motion for Temporary Restraining Order, Order to Show Cause, and Preliminary Injunction;

(3) Memorandum in Support of Motion for Temporary Restraining Order, Order to Show Cause, and Preliminary Injunction; and

(4) A form of an Order to Show Cause and Temporary Restraining Order.

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*/ Another copy of the Complaint, with the signed verification attached, is being sent to us by Federal Express. We will file it and provide you with a copy later today.

As will quickly become evident upon your review of the above enclosures, this matter is directly related to and is a companion case to United States of America, et al. v. Reilly Tar & Chemical Corporation, et al., Civil File No. 4-80-469, which is currently pending before you. In the event that the instant case is not automatically assigned to you by the Clerk's Office, we have, at the direction of your Chambers, prepared a draft Case Reassignment Order which we will present as soon as possible this morning to the Judge to whom the matter is assigned and to yourself to effectuate a reassignment to you.

The Complaint enclosed herein has been filed with the Clerk's Office, and service of a Summons and the Complaint is being effectuated today on the named defendants. Per the instructions of your Chambers, copies of the above-mentioned enclosures are being served on the United States Attorney, on counsel who are representing the United States in the main Reilly case, and on counsel who are representing the State of Minnesota and the Minnesota Pollution Control Agency in the main Reilly case, as soon as possible this morning.

We are informed by your Chambers that you have set a hearing in this matter for 2:00 p.m., Tuesday, March 5, 1985. Please let us know if you require anything further in advance of that hearing. Although Reilly will be prepared at the time of the hearing to provide security under Fed. R. Civ. P. 65(c) if the Court should require same, please note that, as explained in the enclosed Memorandum, none should be required in this instance.

Respectfully yours,

Michael J. Wahoske JCD

Michael J. Wahoske

Enclosures

cc: United States Attorney for the District of Minnesota
David Hird, Esq.
Stephen Shakman, Esq.
Honorable Crane Winton (w/enclosures)

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MICHAEL J. WAHOSKE
(612) 340-8755

March 4, 1985

CERTIFIED MAIL

Attorney General of the United States
Department of Justice
Constitution Avenue and
Tenth Street, N.W.
Washington, D.C. 20530

United States Environmental Protection
Agency and Lee M. Thomas,
Administrator, USEPA, and Jock McGraw,
Acting Assistant Administrator, Office
of Solid Waste and Emergency Response
401 M Street S.W.
Washington, D.C. 20460

Mr. Valdas V. Adamkus
230 South Dearborn Street
Chicago, Illinois 60604

Re: Reilly Tar & Chemical Corporation v.
United States of America, et al.

Gentlemen:

Enclosed and hereby served upon you pursuant to the terms of Federal Rule of Civil Procedure 4(d)(4) and (5), please find the following:

(1) Summons; and

(2) Complaint for Declaratory Judgment and Injunctive Relief.

Please be advised that a copy of the Summons and Complaint is being delivered to the United States Attorney for the District of Minnesota, pursuant to Fed. R. Civ. P. 4(d)(4). Please be further advised that motion papers for a temporary restraining order, order to show cause, and preliminary injunction are being served on the above-mentioned United States Attorney and on David

Hird, Esq., attorney of record for the United States in United States of America, et al. v. Reilly Tar & Chemical Corporation, et al., United States District Court for the District of Minnesota, Civil File No. 4-80-469. A hearing on that motion has been set for 2:00 p.m., Tuesday, March 5, 1985 before the Honorable Paul A. Magnuson in Courtroom No. 3, Federal Courts Building, St. Paul, Minnesota.

Very truly yours,

Michael J. Wahoske

Michael J. Wahoske

Enclosures

MJW:ss

cc: United States Attorney for the District of Minnesota
David Hird, Esq. ✓
Robert Leininger, Esq.

Brundler

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March 4, 1985

United States Attorney
for the District of Minnesota
110 South Fourth Street
Minneapolis, Minnesota 55401

David Hird, Esq.
Room 1260
Environmental Enforcement Section
Land & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Stephen Shakman, Esq.
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

Re: Reilly Tar & Chemical Corporation v.
United States of America, et al.

Gentlemen:

Enclosed and served upon you please find copies of the following:

(1) Complaint for Declaratory Judgment and Injunctive Relief.*/

(2) Notice of Motion and Motion for Temporary Restraining Order, Order to Show Cause, and Preliminary Injunction;

(3) Memorandum in Support of Motion for Temporary Restraining Order, Order to Show Cause, and Preliminary Injunction; and

---

*/ Another copy of the Complaint, with the signed verification attached, is being sent to us by Federal Express. We will file it and provide you with a copy later today.

(4) A form of an Order to Show Cause and Temporary Restraining Order.

As stated in the above Notice of Motion, Judge Magnuson has set a hearing on this matter for 2:00 p.m., Tuesday, March 5, 1985, at his courtroom in St. Paul.

Very truly yours,

Michael J. Wahoske

Michael J. Wahoske

Enclosures

cc: Robert Leininger, Esq. (w/enclosures)

UNITED STATES DISTRICT COUR
DISTRICT OF MINNESOTA
FOURTH DIVISION

REILLY TAR & CHEMICAL CORPORATION,

Plaintiff,

v.

UNITED STATES OF AMERICA; UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; LEE M. THOMAS, Administrator, United States Environmental Protection Agency; JOCK McGRAW, Acting Assistant Administrator, Office of Solid Waste and Emergency Response of the Environmental Protection Agency; VALDAS V. ADAMKUS, Regional Administrator of Region 5 of the Environmental Protection Agency; and

DUANE A. DAHLBERG, Chairperson of the Minnesota Pollution Control Board; THOMAS J. KALITOWSKI, Director of the Minnesota Pollution Central Agency; DALE WIKRE, Director of Division of Solid and Hazardous Waste, Minnesota Pollution Control Agency, and HUBERT H. HUMPHREY, III, Attorney General of the State of Minnesota,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Reilly Tar & Chemical Corporation ("Reilly"), for its Complaint against defendants, states and alleges as follows:

INTRODUCTION AND NATURE OF THE ACTION

1. This is a civil action seeking to enjoin the defendants from assessing daily penalties under the enforcement provisions of either the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C.

§ 9606(b) or the Environmental Response and Liability Act (MERLA), Minn. Stat. § 115B.18, and from applying the punitive treble damages provisions of CERCLA, U.S.C. § 9607(c)(3), on the grounds that, under the circumstances of this case as shall be set forth below, the application of those statutory provisions violates the due process guarantees of the Fifth and Fourteenth Amendments to the Constitution of the United States.

JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331.

VENUE

3. Venue properly lies with this Court pursuant to 28 U.S.C. § 1391(b) and (e).

THE PARTIES

4. Plaintiff Reilly Tar & Chemical Corporation (Reilly) is incorporated under the laws of the State of Indiana and is headquartered at 1510 Market Square Center, 151 North Delaware Street, Indianapolis, Indiana.

5. Defendants are the United States of America, the United States Environmental Protection Agency (EPA), Lee M. Thomas, Jock McGraw, Valdas V. Adamkus, Cynthia Jepsen, Thomas J. Kalitowski, and Dale Wikre.

6. Defendant EPA is an agency of the Executive Branch of the United States established by Reorganization Plan No. 3 of 1970 (35 F.R. 15623; 84 Stat. 2086) pursuant to the

Reorganization Act of 1977, 5 U.S.C. § 901, et seq. Defendant Lee M. Thomas was formerly the Assistant Administrator, Office of the Solid Waste and Emergency Response of the EPA and is now the Administrator of the EPA with the delegated authority to act and to redelegate the power to act under § 104 of CERCLA, consistent with the National Contingency Plan, to remove or arrange for the removal of or provide for remedial action relating to hazardous substances, pollutants or contaminants and to issue administrative orders under § 106(a) of CERCLA, 42 U.S.C. 9606(a). Defendant Jock McGraw is the Acting Assistant Administrator, Office of Solid Waste and Emergency Response of the EPA. Defendant Valdas V. Adamkus is the Regional Administrator for Region 5 of the EPA. Region 5 includes the State of Minnesota. The Administrative Order of the EPA which is pertinent to this action was signed by the Acting Regional Administrator for Region 5 of the EPA. The defendants described in this paragraph shall be referred to from time to time collectively as "the federal defendants."

7. Defendant Duane A. Dahlberg is the Chairperson of the Minnesota Pollution Control Board appointed by the Governor of the State of Minnesota to make the policy decisions of the Minnesota Pollution Control Agency (the MPCA). The MPCA is a statutory agency of the State of Minnesota with power under Minn. Stat. chapters 115-116, to prevent, control and abate pollution of the waters of the State. Defendant Thomas J. Kalitowski is the Director of the MPCA. Defendant Dale Wikre is the Director

of the MPCA Division of Solid and Hazardous Waste. Defendant Hubert H. Humphrey, III, is the Attorney General of the State of Minnesota. Cynthia Jepsen, who was Duane A. Dahlberg's predecessor as Chairperson of the MPCA Board, and Thomas J. Kalitowski signed the Request for Response Action (RFRA) pertinent to this action. Dale Wikre sent the initial draft of the RFRA to Reilly. Hubert H. Humphrey, III, as Attorney General, is charged with enforcing the RFRA pursuant to MERLA, Section 18, Subd. 2, MSA § 115B.18, Subd. 2, and with collecting fines for noncompliance with the RFRA pursuant to MERLA, Section 18, Subd. 1, MSA § 115B.18, Subd. 1. The defendants described in this paragraph shall be referred to from time to time collectively as "the state defendants."

FACTUAL BACKGROUND

8. Reilly operated a coal tar refinery and wood treating facility at a site in St. Louis Park, Minnesota from 1917 to 1972.

9. In 1970 the State of Minnesota (the State) and the City of St. Louis Park (the City) brought suit against Reilly in Minnesota state court alleging soil, water and air pollution stemming from Reilly's St. Louis Park plant and its operations. This suit was at least partially settled in 1972-73 when Reilly sold its plant property to the City, razed its plant according to a plan agreed upon by the City, and obtained a dismissal of the City's suit and a hold harmless agreement from the City with regard to any clean-up which might be sought by the State.

10. In 1978 the State, joined by the City as an intervenor, reactivated the State Court lawsuit alleging that certain contamination of St. Louis Park groundwater was posing a serious health problem and seeking to hold Reilly liable for a remedy.

11. In 1980, at the behest of the State, the United States sued Reilly in this Court under the Resource Conservation and Recovery Act (RCRA), alleging the same contamination and seeking the same relief as had the State and the City in the reactivated State Court lawsuit. That action, Civil File No. 4-80-469, is presently pending in this Court. The State and City intervened, alleged claims under RCRA, and brought their State law claims in that federal action in 1980. The State Court suit has lain dormant since then.

12. Following the passage of CERCLA in December 1980, the United States and the State amended their complaints against Reilly in 1981, adding counts under CERCLA §§ 106 and 107, but still seeking the same remedy from Reilly for the same alleged contamination.

13. The federal lawsuit brought by the United States and joined by the State has been contentiously and zealously contested, both on the law and on the facts as to liability and as to the remedies sought. After years of studies and discovery, the parties are now in the last few weeks of trial preparation with trial currently scheduled to begin on April 29, 1985 pursuant to the Case Management Order signed by the Honorable Paul A. Magnuson on November 30, 1984.

14. Despite its denial of liability, Reilly has, since the instigation of the federal lawsuit, sought to negotiate a responsible settlement of the matters at issue. To that end, it has engaged with its opposing parties in several sets of settlement discussions and has spent a great deal of its money not only in defense of itself but in commissioning and presenting what is the first and as yet only integrated and comprehensive study and recommended solution: The fourteen hundred page "Recommended Plan for a Comprehensive Solution of the Polynuclear Aromatic Hydrocarbon Contamination Problem in the St. Louis Park Area" (ERT Report), reported and made available to the State and the United States by Environmental Research & Technology, Inc. (ERT) in May 1983.

15. Throughout the course of the action instituted by the United States, and throughout the course of all of the studies, the negotiations, and the discovery, the State and the United States, although repeatedly intoning the language of "imminent and substantial endangerment" so as to bring their complaints within statutory requirements, have never actually sought any form of emergency relief from this Court or any other court against Reilly. Nor, until recently, have they issued any form of emergency administrative orders directed to Reilly.

16. After years of preparation for trial and settlement negotiations in a lawsuit which they themselves chose to initiate and which is at last ready for trial, both the United States and the State have, through the issuance of separate administrative orders, sought to compel Reilly to undertake remedial actions

different from those recommended by ERT. Notwithstanding the fact that both of the administrative orders assert that there is now "imminent" danger requiring emergency response, the situation at the Reilly site in St. Louis Park today is no different in any material respect from the situation in 1982, 1980, 1978, or even before. The United States and the State are, in effect, extorting Reilly to perform the same actions which they seek judicially on pain of confiscatory penalties if Reilly should insist on its right to await the trial on the merits.

The Administrative Order From the Federal Defendants

17. Section 106(a) of CERCLA, 42 U.S.C. § 9606, permits the Administrator of the EPA (or those delegated to act for him) when he determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances from a facility to, among other things, issue such administrative orders "as may be necessary to protect public health and welfare and the environment." CERCLA § 106(b), 42 U.S.C. § 9606(b), provides that an administrative order may be enforced in an action commenced in Federal District Court and that refusal to comply with such an order may, in such an action brought to enforce such an order, result in fines of $5,000 per day. Furthermore, CERCLA § 107(c)(3), 42 U.S.C. § 9607(c)(3), provides that if any person who is liable fails to provide removal or remedial action demanded under such an administrative order, such person

may be liable to the United States for not only response costs but also for punitive damages of up to three times the amount of any clean-up costs incurred by the Hazardous Substance Response Fund, popularly known as the "Superfund."

18. On August 1, 1984, after the lawsuit was already well into an extension of the first set of discovery deadlines, the United States, through the EPA, issued an Administrative Order under the emergency provisions of CERCLA § 106, commanding Reilly to design and build part of the United States' desired remedy, that is, a granular activated carbon treatment plant. That Order directed that, unless Reilly complied with the Order in a timely fashion, Reilly would be subject to a daily penalty assessment of $5,000 as well as punitive treble damages. The Order was signed by the Acting Regional Administrator for Region 5 of the EPA; a copy of the Administrative Order is attached to this Complaint as Exhibit A.

19. Reilly, although protesting the impropriety of the Order, has been able to remain in compliance with the Order's requirements in terms of submitting designs and has done so in good faith, albeit with reservations of its rights. However, now that the final intensive trial preparations are underway, Reilly does not have the resources necessary to comply with the Administrative Order while still preparing for trial. Given that the timetable in the Administrative Order is largely dependent on when the EPA chooses to respond to Reilly's submittals, the EPA is in a position where it can put immense

pressure on Reilly at a time of its choosing. For instance, on the eve of trial, the EPA can require Reilly to comply with the next step of the Administrative Order and thus force Reilly either to comply and thereby take resources away from its trial effort which would in effect cause the forfeiture of Reilly's right to trial or to risk confiscatory fines by asserting its right to trial. This present threat that the EPA will exercise its draconian powers puts Reilly in an untenable position of being at the mercy of the EPA as to whether it will be able to exercise its constitutional right to due process.

20. The Administrative Order purports to make findings of fact, conclusions of law and determinations including, but not limited to, findings, conclusions and determinations that there may be an imminent and substantial endangerment to the public health, welfare or the environment because of an actual or threatened release of a hazardous substance from the Reilly site, that Reilly must pay for and construct a granular activated carbon treatment system and that the Order is necessary to protect public health, welfare and the environment. At the administrative level, CERCLA provides plaintiff no evidentiary hearing, no opportunity to confront and/or cross-examine any persons who may have given evidence against Reilly's interests (including those persons who prepared the various reports upon which the EPA relied) and no meaningful opportunity to present rebuttal evidence.

21. By pressing forward with its Administrative Order, the United States is attempting to deprive Reilly of a fair

hearing on whether the remedial response action ordered by the federal government is consistent with the National Contingency Plan (NCP), 40 C.F.R. § 300. The NCP, among other things, requires (1) that there be releases or substantial threats of releases of hazardous substances into the environment and releases or substantial threats of releases of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare; and (2) that the response remedy shall be the lowest cost alternative that is technologically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare or the environment.

22. There is presently an actual controversy between Reilly on one hand and the federal defendants on the other hand in that Reilly contends that the issuance of the Administrative Order prior to the time that a court of competent jurisdiction has resolved the issues described above in paragraph 21 is premature and has the effect of denying Reilly's rights protected by the United States Constitution. By issuing the said Administrative Order dated August 1, 1984, the federal defendants have placed Reilly in the untenable position that if it fails to comply with the Order but instead exercises its right to have these issues decided by a court of competent jurisdiction, it necessarily risks imposition of a $5,000 per day fine under CERCLA § 106, 42 U.S.C. § 9606, and punitive damages under CERCLA § 107(c)(3), 42 U.S.C. § 9607(c)(3). This constitutes an

unreasonable curtailment of Reilly's exercise of its Fifth Amendment rights.

23. Unless the federal defendants are enjoined from applying the enforcement provisions of CERCLA against Reilly, Reilly will suffer irreparable damage in that it will be faced with the prospect of either complying with the Order (thereby waiving its rights to have the issues described above in the preceding paragraph decided by a court of law) or running the risk of a $5,000 per day fine plus punitive damages before the trial on the merits takes place.

The Request for Response Action of the State Defendants

24. Following the lead of the United States, the State has adopted a similar coercive stratagem. On December 18, 1984, after Judge Magnuson had issued his Case Management Order which had been agreed upon by the parties to govern final trial preparation, the State, through the MPCA, issued to Reilly a Request for Response Action (RFRA) under the provisions of Section 17 of the Environmental Response and Liability Act (MERLA), Minn. Stat. Chapter 115B. The RFRA was signed by the Chairman of the MPCA Board and the Director of the MPCA; a copy of the RFRA is attached to this Complaint as Exhibit B.

25. Pursuant to Minn. Stat. § 115B.17, the RFRA contains conclusions that hazardous substances are being released on the Reilly site and that Reilly is responsible for those releases. The RFRA commands Reilly to perform, according to a set schedule, all of the remedial actions which the State seeks

in the lawsuit pending in this Court. The remedial action which the State is compelling is different from and substantially more expensive than that deemed by Reilly and ERT to be the most cost-effective means of providing adequate protection of the public health, welfare and the environment. The remedies required of Reilly under the RFRA are substantially more onerous than the remedies ordered under the Administrative Order and purport to impose upon Reilly an entirely different timetable. The remedies required by the RFRA may be entirely different from and inconsistent with those ultimately required by the EPA under the NCP. Compliance with the State's RFRA is compelled on pain of $20,000 per day in fines, pursuant to MERLA, Minn. Stat. § 115B.18.

26. Once again, Reilly has, with clear reservations of its rights, remained in technical and good faith compliance with the RFRA requirements. However, now that final intensive trial preparations are underway, Reilly no longer has the resources necessary to comply with RFRA while still preparing for trial. Specifically, Reilly is unable to meet the requirement listed on page 4 of the RFRA (see Exhibit B) that it submit a plan to reconstruct well W23 on or before March 5, 1985. As set out in Stephen Shakman's letter to Edward J. Schwartzbauer dated December 18, 1984, Reilly's failure to submit the required plan for reconstruction of well W23 on or before March 5, 1985 could "trigger . . . the imposition of civil penalties . . .." A copy of Mr. Shakman's letter is attached to this Complaint as Exhibit C. Moreover, the MPCA has notified Reilly that it

has sought authorization to contract with other parties to undertake some of the requirements in the RFRA. This action demonstrates the MPCA's intention to forge ahead with its remedial actions and then issue a Determination of Inadequate Response at a time calculated to put even more pressure on Reilly to forego its right to a trial and to accede to the State's settlement demands. The State is using the threat of confiscatory penalties to deprive Reilly of its right to a fair, judicial trial on the merits and to compel Reilly to agree to the exact remedies which the State is seeking before this Court.

27. Unless the state defendants are enjoined from applying the enforcement provisions of MERLA against Reilly, Reilly will suffer irreparable damage in that it will be faced with the prospect of either complying with the RFRA and foregoing its right to trial or running the risk of a $20,000 per day fine before the trial on the merits takes place.

28. The situation described above has forced Reilly to seek this Court's protection so that it can proceed to have its day in court to which it is entitled under the Constitution of the United States and the amendments thereto.

COUNT ONE

29. The present threat that the United States, the EPA, Lee M. Thomas, Jock McGraw, Valdas V. Adamkus, their officers, agents, servants, employees, attorneys and all persons in active concert or participation with them will assess daily penalties under the enforcement provisions of CERCLA or to apply

the punitive treble damages provisions of CERCLA chills Reilly's right to have the allegations levied against it in the pending Federal Court proceeding decided at trial on the merits.

30. For those reasons, the daily penalties provisions and the punitive treble damages provisions of CERCLA, 42 U.S. § 9606(b) and 42 U.S. § 9007(c)(3), as they might be applied to Reilly in this instance, constitute a violation of the due process guarantee contained in the Fifth Amendment to the Constitution of the United States.

COUNT TWO

31. The present threat that Duane A. Dahlberg, Thomas J. Kalitowski, Dale Wikre, Hubert H. Humphrey, III, their agents, servants, employees, attorneys and all persons in active concert or participation with them will enforce the daily penalties provisions of MERLA, Minn. Stat. § 115B.18, chills Reilly's right to have the allegations brought against it in the pending federal action heard in Court and determined on the merits.

32. For those reasons, the daily penalty provisions of MERLA, Minn. Stat. § 115B.18, as they might be applied to Reilly in this instance, constitute a violation of the due process guarantee of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, plaintiff Reilly Tar & Chemical Corporation prays that:

1. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, the daily penalty provisions and the punitive treble damages provisions of CERCLA, 42 U.S.C. § 9606(b) and 42 U.S.C. § 9607(c)(3), respectively, be adjudged and declared unconstitutional under the Fifth Amendment to the Constitution of the United States as those provisions might be applied to Reilly Tar & Chemical Corporation in conjunction with the Administrative Order directed to Reilly Tar & Chemical Corporation and signed by an agent of the EPA on August 1, 1984;

2. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, the daily penalty provisions of MERLA, Minn. Stat. § 115B.18, be adjudged and declared unconstitutional under the Fourteenth Amendment to the Constitution of the United States as those provisions might be applied to defendant Reilly Tar & Chemical Corporation in connection with the RFRA directed to Reilly Tar & Chemical Corporation and signed by agents of the MPCA on December 18, 1984;

3. Defendants United States, EPA, Lee M. Thomas, Jock McGraw, Valdas V. Adamkus, their officers, agents, servants, employees, attorneys and all persons in active concert or participation with them be permanently enjoined from implementing, assessing and enforcing the daily penalty provisions and the punitive treble damages provisions of CERCLA, 42 U.S.C. § 9606(b) and 42 U.S.C. § 9607(c)(3), in connection with the Administrative Order of the EPA dated August 1, 1984;

4. Defendants Duane A. Dahlberg, Thomas J. Kalitowski, Dale Wikre, Hubert H. Humphrey, III, their agents, servants, employees, attorneys, and all persons in active concert or participation with them be permanently enjoined from implementing, assessing and enforcing the daily penalty provisions of MERLA, Minn. Stat. § 115B.18, in connection with the RFRA of the MPCA dated December 18, 1984;

5. Plaintiff Reilly Tar & Chemical Corporation be awarded its costs and disbursements in this action, including reasonable attorneys' fees; and

6. This Court grant such other relief as it deems appropriate and equitable.

Dated: March 4, 1985.

DORSEY & WHITNEY

By Edward J. Schwartzbauer JED
Edward J. Schwartzbauer
Becky A. Comstock
Michael J. Wahoske
James E. Dorsey
2200 First Bank Place East
Minneapolis, Minnesota 55402
Telephone: (612) 340-2600

Attorneys for Defendant Reilly Tar & Chemical Corporation

VERIFICATION

STATE OF INDIANA)
) SS.
COUNTY OF MARION)

Robert Polack, being duly sworn, says that he is the Vice President and General Counsel of Reilly Tar & Chemical Corporation, plaintiff in the above-entitled action, in which capacity he has had responsibility for keeping abreast of and advising the plaintiff concerning the facts underlying this Complaint; that he has read the Complaint and knows the contents thereof; that he believes the same to be true either based on his own knowledge or based on information he has received from employees, experts, and attorneys of the plaintiff who have personal knowledge of the facts alleged herein.

Robert Polack

Subscribed and sworn to before me
this 1st day of March, 1985

Marilyn Joyce Rawley
Notary Public
County of Morgan

Marilyn Joyce Rawley
Notary Public No. 102362
My commission expires
March 23, 1987

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN THE MATTER OF:	
Reilly Tar & Chemical Corporation	ADMINISTRATIVE ORDER
Proceeding Under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9606(a)]	Docket No. V-W-84-011

PREAMBLE

The following Order is issued on this date to Reilly Tar & Chemical Corporation (hereafter "Respondent") pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9606(a), and delegated to the United States Environmental Protection Agency (U.S. EPA) by Executive Order No.12316, August 26, 1981, 46 Federal Register 42237, and redelegated to the Regional Administrator by Delegation 14-14 issued April 1, 1983. Notice of the issuance of this Order has heretofore been given to the State of Minnesota.

EXHIBIT A

FINDINGS AND CONCLUSIONS

1. The Reilly Tar & Chemical Corporation site (hereafter "Facility") is an eighty acre "facility", as such term is defined in Section 101(a) of CERCLA, where hazardous substances were deposited, stored, disposed of, placed or located. It is located in a residential area in St. Louis Park, Minnesota, west of Gorham, Republic and Louisiana Avenues, south of 32nd street, east of Pennsylvania Avenue and North of Walker street.

2. From 1917 to 1973 the Respondent owned the Facility upon which was operated a coal tar distillery and wood preserving operation. Respondent was an "owner or operator" of the Facility from 1917 to 1973 within the meaning of Section 101(20) of CERCLA. In 1972 the structures of the Facility were dismantled and in 1973 the Facility was sold to the city of St. Louis Park.

3. The main product of Respondent's coal tar distillation operation at the Facility was creosote, which is a "hazardous substance" as defined in Section 101(14) of CERCLA. The chemical compounds that compose creosote and the wastes associated with creosote production are polynuclear aromatic hydrocarbons (PAH) and phenolics. Many of these compounds are hazardous substances, pose health risks and some are carcinogenic.

4. During the entire course of operations at the Facility, Respondent discharged waste containing hazardous substances onto the Facility and into a peat bog south of the Facility. The peat bog has released and continues to release such hazardous substances into the groundwater.

5. Wastes containing hazardous substances also were discharged into a well which is located on the Facility. The wastes penetrated the well to a known depth of 740 feet and thereby contaminated the Prairie du Chien-Jordan aquifer. The Prairie du Chien-Jordan aquifer is the primary source of drinking water for approximately 100,000 people in the cities of St. Louis Park, Edina and Hopkins.

6. In 1978 the city of St. Louis Park closed four of its municipal drinking water wells due to the presence of hazardous substances released from the Facility into the Prairie du Chien-Jordan aquifer. St. Louis Park subsequently closed down two other municipal drinking water wells due to the presence of hazardous substances from the Facility in the drinking water. The city of St. Louis Park has lost a substantial amount of its municipal drinking water capacity as a consequence of the well shutdowns which have occurred since 1978. In addition, in March, 1981 the city of Hopkins, Minnesota shut down one of its municipal drinking water wells because of the presence of hazardous substances released from the Facility into the Prairie du Chien-Jordan aquifer.

7. Analyses which have been conducted on behalf of MPCA and Respondent have revealed the presence of tne following hazardous substances which were released from the Facility and were found in the aquifer which supplies the municipal drinking water:

> Chrysene, acenaphthylene, acenaphthene, anthracene, benz(a)anthracene, naphthalene, phenanthrene, pyrene, quinoline, benzo(k)fluoranthene, benzo(a)pyrene, fluoranthene, fluorene and indeno(1,2,3-cd)pyrene.

8. In August, 1981 the Minnesota Pollution Control Agency (MPCA) was awarded funds pursuant to CERCLA to perform a study for restoration of the drinking water supply to the city of St. Louis Park. In August 1982, MPCA hired a contractor, approved by U.S. EPA, to assist in developing information for the evaluation of water supply alternatives for St. Louis Park. These alternatives were developed, reviewed and tested by the MPCA, U.S. EPA and their contractors.

9. After thorough consideration of all of the drinking water supply alternatives, U.S. EPA determined that installation of a granular activated carbon water treatment system was the cost-effective remedy which would provide adequate protection to public health, welfare and the environment. This determination was made, consistent with CERCLA and the National Contingency Plan (40 CFR Part 300), and embodied in a Record of Decision for Remedial Action Alternative Selection which was signed on June 6, 1984 by Lee M. Thomas, Assistant Administrator for Solid Waste and Emergency Response. A copy of the Record of Decision is attached hereto as Exhibit A.

10. The presence of hazardous substances including known carcinogens, in the drinking water supply of St. Louis Park, Minnesota may present an imminent and substantial endangerment to public health, welfare or the environment because of the previous, current and continued release and threatened release of hazardous substances from the Facility.

11. In order to abate the threat to public health, welfare and the environment, it is necessary that the remedial actions, as set forth in the Record of Decision (Exhibit A) be undertaken on an expedited basis.

ORDER

Based upon the foregoing Findings and Conclusions, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. 9606(a) it is hereby ordered that the following actions be taken by Respondent: For the purpose of this Order the definitions provided in Exhibit B will be used.

1. Within 60 calendar days of the effective date of this Order, Respondent shall develop and submit a complete design including plans and specifications for the construction of a granular activated carbon (GAC) treatment system at the St. Louis Park municipal drinking water wells designated SLP15/10. The treatment system shall be designed consistent with the design criteria which have been developed by U.S. EPA and MCPA. A copy of such design criteria is attached hereto as Exhibit C.

2. Following receipt of the GAC treatment system design, U.S. EPA will review the design and notify Respondent in writing as to whether the design has been approved or disapproved.

3. If the design is not approved, the notification will set forth the modifications which are required to be made to such design.

4. Respondent shall have ten calendar days, from receipt of the notice that the design was not approved, within which to submit the required modifications to U.S. EPA. If Respondent's modifications to the design are acceptable, U.S. EPA will notify Respondent in writing that the design has been approved. If the modifications are not acceptable, U.S. EPA will either:

a) notify Respondent in writing that the design has been modified by U.S. EPA and shall be considered to be approved as so modified or

b) notify Respondent that Respondent is deemed not to have complied with the terms of this Order.

5. Respondent shall have two hundred calendar days from the date that the design is approved within which to fully construct and initiate operation of the GAC treatment system pursuant to the approved design.

6. Respondent shall provide written progress reports to U.S.EPA which describe the actions which have been taken toward achieving compliance with this Order during the previous month as well as actions which are scheduled for the next month. These progress reports are to be submitted to U.S. EPA by the tenth day of every month following the effective date of this Order.

7. Respondent shall make available to U.S. EPA any documents, data or other information developed, used or relied upon pursuant to its implementation of the terms of this Order.

8. Respondent shall provide written notification to U.S.

EPA within 3 days of completing construction of the GAC treatment system pursuant to the approved design. Following receipt of such notification, U.S. EPA will inspect the system, and Respondent shall demonstrate that the system has been constructed and operates in accordance with the approved design.

9. Following inspection of the treatment system U.S. EPA will notify Respondent in writing as to whether the treatment system is approved or disapproved. If the treatment system is approved the Respondent shall sample the performance of the system in accordance with the attached sampling schedule, Exhibit D. If the treatment system is not approved, the notification will set forth the modifications which are required to be made in the treatment system.

10. Respondent shall have fifteen calendar days from receipt of the notice within which to initiate the required modifications to the treatment system. At such time when the modifications are acceptable, U.S. EPA will notify Respondent in writing that the treatment system has been approved. If the modifications are not acceptable, U.S. EPA will notify Respondent that Respondent is deemed not to have complied with the terms of this Order.

11. Within one hundred fifty calendar days of approval of the design for the treatment system, Respondent shall submit a plan for the operation and maintenance of the GAC treatment system over the next 25 years consistent with Exhibit D, attached hereto. Following receipt of such plan, U.S. EPA will review the plan and notify Respondent in writing as to whether the plan is

approved or disapproved. If not approved, the notification will set forth the modifications which are required to be made to the plan.

12. Respondent shall have fifteen calendar days from receipt of the notice within which to submit the required modifications to U.S. EPA. If the modifications are not acceptable, U.S. EPA will either:

a) notify Respondent in writing that the plan has been modified by U.S. EPA and shall be considered to be approved as so modified or

b) notify Respondent that Respondent is deemed not to have complied with the terms of this Order.

13. Respondent shall be fully and solely responsible for implementation of the approved operating and maintenance plan for the GAC treatment system. Such responsibility shall commence on the date that Respondent receives approval of the construction of the treatment system and shall continue for the period of time within which the system is required to be operated pursuant to Exhibit D.

14. All instructions by U.S. EPA representatives consistent with the terms of this Order, and consistent with Section 106(a) of CERCLA, 42 U.S.C. 9606(a), and with the National Contingency Plan, 40 CFR Part 300, shall be binding upon the Respondent and shall be deemed a part of this Order.

15. On or before the effective date of this Order, Respondent shall provide notice in writing to U.S. EPA stating its

intention to comply with the terms thereof. In the event that Respondent fails to provide such notice, said Respondent shall be deemed not to have complied with the terms of this Order.

16. The provisions of this Order shall be binding upon employees, agents, successors, and assigns of the Respondent. Nothing contained in this Order shall affect any right, claim, or cause of action of any party hereto with respect to third parties.

17. Nothing contained herein shall be construed to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S. C. 9601 et seq., or any other applicable law.

18. All notices and consultation required under the terms of this Order shall be directed to Paul Bitter, On-Scene Coordinator, at the following address:

Paul Bitter, On-Scene Coordinator
United States Environmental Protection Agency
Region V
230 South Dearborn
Chicago, Illinois 60604

19. This Order shall be effective on the tenth (10th) calendar day following issuance unless a conference is requested as hereinafter provided. If a conference is requested, this Order shall be effective on the third (3rd) calendar day following the day of the conference unless modified by the Regional Administrator.

ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Findings, Conclusions and Order is available for review on weekdays between the hours of 8:00 A.M. and 5:00 P.M., in the Office of Regional Counsel, 16th Floor, United States Environmental Protection Agency. Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Please contact Robert Leininger, Assistant Regional Counsel, at 312/886-6720, if you desire to review the Administrative Record.

OPPORTUNITY TO CONFER

With respect to the actions required above, you may within ten (10) calendar days after issuance of this Order request a conference with U.S. EPA to discuss this Order and its applicability to you. Any such conference shall be held within 21 calendar days from the date of request. At any conference held pursuant to your request, you may appear in person and by an attorney or other representatives for the purpose of presenting objections, defenses or contentions which you may have regarding this Order. If you desire such a conference, please contact Robert Leininger, Assistant Regional Counsel, at 312/886-6720. Any comments which you may have regarding this Order, its applicability to you, the correctness of any factual determinations upon which the Order is based, the appropriateness of any action which you are ordered to take, or any other relevant and material issue must be reduced to writing and submitted to U.S. EPA on the

day of the conference, or if no conference is requested, within seven (7) calendar days following the issuance of this Order. Any such writing should be sent to Robert Leininger, Assistant Regional Counsel, U.S. EPA, Region V, 230 S. Dearborn Street Chicago, Illinois 60604.

You are hereby placed on notice that U.S. EPA will take any action which may be necessary in the opinion of U.S. EPA for the protection of public health and welfare and the environment, and Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for the costs of those government actions.

PENALTIES FOR NONCOMPLIANCE

Respondent is advised that, pursuant to §106(b) of CERCLA, 42 U.S.C. 9606(b), willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondent to a civil penalty of not more than $5,000 for each day in which such violation occurs or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause, may also subject Respondent to liability for punitive damages in an amount three times the amount of any costs incurred by the government as a result of Respondent's failure to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. 9607(c)(3).

IT IS SO ORDERED

on this 1st day of

Aug., 1984.

By: Adam Levin (Acting)
Valdas V. Adamkus

Regional Administrator
United States Environmental
Protection Agency

EXHIBIT B

DEFINITIONS

As used in this Order and Exhibits, regarding construction, monitoring and operation of a GAC System, the following words and phrases shall have these meanings:

Advisory level: A PAH concentration higher than 15 nanograms per liter (ng/l) carcinogenic PAH or 175 ng/l other PAH in drinking water which has been treated to remove PAH or in ground water which is monitored in order to determine the need to install drinking water treatment.

Carcinogenic PAH: Those PAH compounds listed in Exhibit E as being carcinogenic, and any compounds which the MPCA or EPA has determined subsequent to the date of this Order to pose a significant risk of being carcinogenic. For compliance monitoring purposes, the concentration of carcinogenic PAH shall be the sum of the concentrations of all carcinogenic compounds listed in Exhibit E.

Day: When used in this Order to indicate a deadline for a required action, a day shall mean a calendar day. Whenever a submittal or action required by the Order falls on a Saturday, Sunday or legal holiday, the submittal or action shall be due upon the next following day of business.

EPA: The United States Environmental Protection Agency

Monitor: Collect a sample and analyze for PAH, as well as for any other parameters specified, in accordance with the sampling and analytical plan required under this Order or as otherwise approved by the Regional Administrator.

Other PAH: PAH compounds other than those which are presently known to be carcinogenic. For compliance monitoring purposes, the concentration of other PAH is defined as the sum of the concentrations of all compounds listed in Exhibit E that are not designated carcinogens.

PAH: polynuclear aromatic hydrocarbons, which shall include heterocyclic polynuclear aromatic hydrocarbons, indene, and substituted indenes.

Phenolics: Aromatic organic compounds substituted with one or more hydroxyl groups, which are detected by EPA Method 625 or other methods as approved by the Regional Administrator.

Regional Administrator: The Regional Administrator of the EPA Region in which the site is located (currently Region V).

Replacement Level: A PAH concentration higher than the drinking water criteria for carcinogenic or other PAH in effluent from a GAC treatment system used to remove PAH from contaminated ground water.

Total PAH: The sum of the concentrations of all carcinogenic and other PAH.

EXHIBIT C DESIGN CRITERIA

The system shall be designed in accordance with the following criteria:

Item	Design Value
Flow Rate from SLP 15/10	1,200 gal/min
Raw Water PAH Concentration	7,000 ng/l
Treated Water PAH Concentration (until otherwise specified by the EPA and MPCA)	Carcinogenic PAH less than 2.8 ng/l Total PAH less than 280 ng/l

Carbon Columns

Number	3
Size	16 ft. diameter X 5 ft.
Bed Volume (empty)	5,200 gal. per column
Carbon Capacity	20,000 lb. per bed 60,000 lb. total
Loading Rate	6.0 gal/min./ft2
Contact Time (empty bed basis)	12.9 min. total
Head Loss Across Columns	
-Clean Bed	3.5 lb/in2
-At Backwash	15.0 lb./in2
Carbon	Calgon "Filtrasorb 300" or equivalent

Minicolumns (for pilot testing alternative carbon)

Number	4
Size	4 in. diameter X 4 ft.

EXHIBIT D

OPERATION, SAMPLING AND MONITORING OF GAC SYSTEM

(1) Reilly shall operate the GAC system at SLP 15 and SLP 10 until all samples taken at the wellhead for each of the previous five consecutive years are below the drinking water criteria for carcinogenic and other PAH listed in Exhibit E.1 and below the advisory level for each of the previous three consecutive years. At least two of these samples, or two additional samples, taken at least one year apart, must be monitored for the extended list of PAH in Exhibit E.2, using GC/MS as specified in Exhibit D or as specified in the monitoring plan submitted by Reilly as approved by the Regional Administrator. A sample which yields results above the drinking water criteria or advisory level may be excluded from the determination above if a duplicate sample or all additional samples taken not more than three weeks after the sample in question is taken yield results below the drinking water criteria or the advisory level, respectively.

(2) Treated water from the GAC system shall be monitored as follows:

(A) During the testing period prior to hookup to the distribution system, Reilly shall monitor six times.

(B) During the first month following approval of the system and connection to the municipal drinking water distribution system, Reilly shall monitor twice weekly. Following review of the analytical results, the Regional Administrator may determine that the system is operating properly, and authorize Reilly to

assume the routine monitoring frequency described in (C) below; or, if tne determination is made that the results do not indicate proper operation of the system, may require Reilly to continue twice weekly monitoring for a period of time not to exceed two months or to remove the GAC system from the municipal distribution system and conduct further testing of the system, modification of the system, or other action as approved by the Regional Administrator.

(C) Routine monitoring shall be done monthly until the carbon has been replaced twice. If advisory level or replacement level results are obtained during the first year of operation of the system, Reilly shall immediately notify the Regional Administrator and shall conduct such additional monitoring, testing, modification of the system, or other action as may be required by the Regional Administrator.

(D) Routine monitoring after two carbon changes shall be done quarterly, unless the Regional Administrator determines that the observed service life of the carbon is too short to permit this frequency, in which case the Regional Administrator will notify Reilly of the required monitoring frequency.

(E) If any monthly or quarterly sample exceeds the advisory level, another sample shall be taken immediately and analyzed. If this second sample yields comparable results, the frequency of analysis shall increase to semimonthly until three consecutive results below the advisory limit are obtained.

(F) If the result of monitoring any sample is found to exceed the replacement level, another sample shall be taken immediately. If the analytical result of the second sample exceeds the advisory level but is less than the replacement level, Reilly shall monitor as specified in paragraph (E) above. If the analytical result of the second sample exceeds the replacement level, the system shall be shut down and the carbon replaced with fresh carbon in accordance with the requirements below. Following replacement of carbon, treated water shall be monitored weekly for one month, and in accordance with the monitoring requirements of (C) and (D) above thereafter.

(3) Untreated water from SLP 10 or 15 shall be monitored at the well head at the same time treated water from the GAC system is monitored at the following intervals:

(A) During the testing period prior to hookup, untreated water shall be monitored each time treated water is monitored.
(B) During the first month after connection to the distribution system, untreated water shall be monitored weekly.
(C) After the Regional Administrator has approved routine monitoring of treated water, during the first two carbon fills in the GAC system, routine monitoring of untreated water shall be quarterly.
(D) After two carbon changes in the GAC system, untreated water shall be monitored annually.

(E) If the treatment system is located downstream of the sand filter, water shall also be monitored at the point of entry to the treatment system at the same intervals and at the same time as samples of untreated water are taken in accordance with subparagraphs 1 through 4 of this Exhibit D.

(4) When minicolumns are used to predict breakthrough of the carbon in use in the treatment system or for testing carbons from suppliers other than the supplier of the carbon in use in the treatment system, Reilly shall monitor minicolumns monthly until breakthrough of PAH occurs. Carbon shall then be replaced in the minicolumns and again monitored monthly until breakthrough occurs.

(5) At least one sample of treated water from the GAC system per year shall be monitored for the extended list of PAH in Exhibit E.2 using gas chromatography/mass spectroscopy (GC/MS). During this extended analysis, any compounds, other than those routinely analyzed for, which are detected shall be identified and, if possible, quantified, using a mass spectral library which contains extensive spectra of PAH compounds such as the NBS mass spectral library. Reilly shall analyze, at least once a year, a sample of treated and untreated water for the acid fraction compounds determined by U.S. EPA Test Method 625 or by other methods approved by the Regional Administrator, such as high performance liquid chromatography with electrochemical detection for the measurement of phenolic compounds. Reilly shall submit a Quality Assurance/ Quality Control Plan for analysis of PAH compounds for approval by U.S. EPA prior to collection of samples.

(6) Reilly shall report the results of each analysis of treated or untreated water taken from SLP 10 or SLP 15 regardless of whether the samples are required in this Exhibit. Data recorded pursuant to this Exhibit as well as other data obtained from SLP 10 or SLP 15 shall be reported to the U.S. EPA and the State of Minnesota no later than the tenth day of the month following the recording of the data by Reilly. The said data shall be included in the monthly progress reports cited in paragraph 6 of this Order.

CARBON REPLACEMENT

Whenever Reilly is required to replace carbon in the GAC system, the following procedure shall be used:

(A) When the system is operated in series, the carbon in the first two columns shall be replaced. The configuration of the system shall then be adjusted so that the influent flows first to the column which was formerly last in the series, and then to the two columns which received fresh carbon.

(B) When the system is operated in parallel, carbon in all columns shall be replaced.

(C) When the system is operated with two columns in parallel followed by one column in series, the carbon in all columns shall be replaced.

CARBON DISPOSAL

Reilly shall transport and dispose of or provide for the regeneration of spent carbon from the treatment system in accordance with all aplicable rules, regulations, laws and ordinances.

EXHIBIT E

1. List Of Compounds To Be Monitored On Periodic Basis

Naphthalene
1-Methylnaphthalene
2-Methylnaphthalene
Acenaphthylene
Acenaphthene
Fluorene
Anthracene
Phenanthrene
Pyrene
Fluoranthene
+Benzo(a) anthracene
+Chrysene
+Benzo(b)fluoranthene
+Benzo(k)fluoranthene
+Benzo(a)pyrene
+Benzo(e)pyrene
+Benzo (j)fluoranthene
Perylene
Benzo(ghi)perylene
+Indeno(1,2,3-cd)pyrene
+Dibenzo(a,h)anthracene
Acridine
Carbazole
Indole
+Quinoline
Benzo(b)thiophene
Dibenzofuran
2,3-Benzofuran
Biphenyl
2,3-Dihydroindene
Indene

2. Extended list of compounds to be monitored periodically

+Dibenzo ae,pyrene
+Dibenzo ah,pyrene
+Dibenzo ai,pyrene
+7,12-Dimethylbenz(a)anthracene
+Dibenz(a,c)anthracene
+3 Methylcholanthrene
+Benzo(c)phenanthrene
Other compounds as agreed upon

+ = Carcinogen

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

DEC 27 [illegible]

In the matter of the
Reilly Tar and Chemical Co. site,
St. Louis Park, Minnesota

To: The Reilly Tar and Chemical Company

I. NOTIFICATION OF OBLIGATION TO TAKE RESPONSE ACTION

A. This document is issued by the Minnesota Pollution Control Agency (MPCA), and constitutes a Request for Response Action (RFRA), as authorized by Minn. Stat. §§ 115B.17 and 115B.18 (1983 supp.).

B. YOU ARE HEREBY NOTIFIED that the MPCA has made the following determinations:

1. The property located in St. Louis Park, Minnesota, known as the Reilly Tar and Chemical Corporation site, located near the intersection of Louisiana Avenue and Walker Street, constitutes a facility within the meaning of Minn. Stat. §115B.02, subd. 5. (The property is hereinafter referred to as "the Reilly site" or "the facility.");

2. Substances found, spilled, or disposed of at the Reilly site and in the ground water elsewhere in St. Louis Park are hazardous substances within the meaning of Minn. Stat. § 115B.02, subd. 8 and subd. 9;

3. there have been one or more releases and continues to be a release of these hazardous substances from the facility within the meaning of Minn. Stat. § 115B.02, subd. 15; and

4. with respect to these releases, the Reilly Tar and Chemical Co. (hereinafter "Reilly") is a responsible person within the meaning of Minn. Stat. § 115B.03, subd. 1(a) and subd. 1(b).

C. Having made these determinations, the MPCA formally requests that Reilly take the response actions described in Section II of this document. A timetable for beginning and completing the actions is set out in Section III. The reasons for the requested actions are set out in Section IV. Section V describes the intention of the MPCA to take action if Reilly fails to take the requested response action within the timetable set out in Section III. Section V also describes the consequences of failure to satisfactorily respond to this Request for Response Action. Section IV describes the requirement to reimburse the MPCA for its costs.

D. Following issuance of this Request for Response Action, Reilly has until January 4, 1985 to negotiate a Consent Order with MPCA staff.

E. If a Consent Order between Reilly and the MPCA staff is reached, the MPCA staff will present the draft Consent Order to the MPCA. The Consent Order, if approved by the MPCA and the U.S. District Court, will control the response actions taken at and around the Reilly site. If no Consent Order is reached within the allotted time period, the matter may be referred to the MPCA for a Determination of Inadequate Response.

II. REQUESTED RESPONSE ACTION

The MPCA has determined (1) that the following actions constitute removal or remedial actions within the meaning of Minn. Stat. §§ 115B.02 subds. 17 and 18 and (2) that these removal or remedial actions are reasonable and necessary to protect the public health, welfare or the environment. Therefore, the MPCA hereby formally requests that Reilly take the actions within the timetables established in Section III.

A. Remedial Investigation (RI)

Additional remedial investigation is necessary to determine the actual extent of contamination in the drift, Platteville, and St. Peter aquifers and in the subsurface soils south of the Reilly site. The purpose of the RI is to allow design of gradient control systems in the drift, Platteville, and, if necessary, St. Peter aquifers, and to assess the impact of subsurface contamination on properties to the south of the Reilly site. The requirements of the RI are described in Exhibit A to this RFRA.

B. Feasibility Study (FS)

The results of ground water modeling work performed by the United States Geological Survey (USGS) have shown that pumping St. Louis Park municipal well 4 (SLP 4) at 750 to 1000 gallons per minute will provide gradient control in the Prairie du Chien-Jordan aquifer and will provide protection to municipal wells in St. Louis Park and Edina which are not now contaminated. A feasibility study is required to determine the best method for discharging ground water pumped from the gradient control system. In addition, following the RI (A. above) for the drift, Platteville, and St. Peter aquifers, it is necessary to determine the number and configuration of pumping wells in each aquifer which will provide gradient control. The requirements of the FS are described in Exhibit A and incorporated into this RFRA.

C. Interim Remedial Measures (IRM)

The purpose of interim remedial measures (IRM) is to provide immediate removal of contaminants at the source and to prevent further migration of contamination from upper contaminated aquifers to lower, otherwise uncontaminated aquifers via multi-aquifer wells. The IRM will consist of reconstruction and pumping the deep well on the Reilly site (W23) through which contamination of deep aquifers have occurred and investigation and closure of multi-aquifer wells. The requirements of the IRM are described in Exhibit A and incorporated into this RFRA.

D. Response Action Plan (RAP) and Response Action Implementation

The purpose of the RAP is to provide a detailed design of response actions which, upon implementation, will protect the public health, welfare, and environment from the threatened or actual release of hazardous substances associated with the Reilly site, and restore part of the municipal water supply lost to contamination from the Reilly site. The requirements of the RAP and RAP implementation are described in Exhibit B and incorporated into this RFRA.

E. Routine Monitoring Program

In order to determine the effectiveness of any implemented response actions, as well as to monitor the movement of contaminants in aquifers for which no response actions are presently designated, a program of long-term sampling and analysis shall be established. A plan for long-term ground water monitoring shall be prepared for the Reilly site and surrounding area by Reilly and submitted for the MPCA Director's review and approval. The proposed plan shall specify sampling of existing and additional wells. The plan shall specify which wells are to be sampled, the frequency at which the wells are to be sampled, the chemical parameters which shall be analyzed, sampling and analytical methods, and detection limits. Reilly shall implement the monitoring plan upon approval by the MPCA Director. The requirements for the monitoring program are described in Exhibit B and incorporated into this RFRA.

F. Reports

The MPCA Director shall be provided with progress reports by the tenth day of each month. The progress reports shall describe activities conducted pursuant to this Request for Response Action during the preceding month and activities planned for the next month. The progress reports shall be addressed to:

Stephen D. Riner, Project Leader
Division of Solid and Hazardous Waste
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

III. TIMETABLE FOR COMPLETING THE REQUESTED RESPONSE ACTIONS

The MPCA has determined that the following timetable is necessary and reasonable. The timetable references specific elements of Exhibits A and B to this RFRA.

Notice of Intent to Comply	January 4, 1985
Consent Order Negotiation Period	Until January 4, 1985

Submit RI, QA/QC Plan, and GAC System Design	February 4, 1985
Begin RI	Thirty days after Director's approval of plan.
Submit Report on RI	180 days after beginning work
Submit Gradient Control FS Plan	February 4, 1985
Begin Gradient Control FS Study	20 days after Director's approval of plan
Submit Report on Gradient Control FS	120 days after beginning work
Submit Plan for drift-Platteville [and St. Peter] Gradient Control FS	30 days after Director's approval of RI report
Begin drift-Platteville [and St. Peter] Gradient Control FS	Twenty days after Director's approval of plan.
Complete drift-Platteville [and St. Peter] Gradient Control FS and Submit Report	90 days after beginning work.
Submit Plan to Reconstruct W23	March 5, 1985
Begin reconstruction of W23	Fifteen days after Director's approval of plan.
Pump W23	75 days after beginning work on W23
Submit Response Action Plan (RAP) for Prairie du Chien-Jordan Gradient Control	45 days after MPCA Director's approval of Prairie du Chien-Jordan Gradient Control Detailed Analysis Report.
Implement Prairie du Chien-Jordan Gradient Control	15 days after MPCA Director's approval of RAP.

Submit Response Action Plan for drift-Platteville [and St. Peter] Gradient Control	45 days after MPCA Director's approval of drift-Platteville [and St. Peter] Gradient Control Detailed Analysis Report.
Implement drift-Platteville [and St. Peter] Gradient Control	15 days after MPCA Director's approval of RAP.
Begin GAC System Construction	30 days after MPCA Director's approval of design.
Begin Testing Completed GAC System	5 days after MPCA Director's approval of completed system.
Begin Operating Completed GAC System	5 days after MPCA Director's approval of testing.
Begin Contingency Monitoring	April 4, 1985.

The MPCA Director shall be promptly notified of any anticipated or actual failure to comply with the dates or other terms of this Request for Response Action. Such notice shall include the reasons for the noncompliance and steps proposed for a return to compliance or alternative actions proposed to comply with the intent of this Request for Response Action. The MPCA Director may accept or modify the proposed compliance measures if the Director determines that such measures are adequate and that the need for the modification is not a result of failures within the control of the responsible parties.

IV. REASONS FOR THE REQUESTED ACTION

The ground water beneath and in the vicinity of the Reilly site in St. Louis Park is contaminated with hazardous substances. The ground water in this area is used as a municipal drinking water supply by the Cities of St. Louis Park, Hopkins, and Edina. The Reilly site is a source of the release of these hazardous substances.

MPCA and Minnesota Department of Health (MDH) staff and consultants to the MPCA have sampled ground water from numerous wells in the St. Louis Park area. From 1978 to 1981, six municipal wells in St. Louis Park and one in Hopkins were closed due to contamination with PAH.

The requested actions set out in Sections II and III will provide for such additional information as is necessary to fully evaluate and allow for selection, design, and implementation of appropriate response actions to prevent additional or continued releases.

V. MPCA INTENTION TO TAKE ACTION AND CONSEQUENCES OF RESPONSIBLE PERSON'S FAILURE TO TAKE REQUESTED ACTION.

A. YOU ARE HEREBY NOTIFIED that under the Minnesota Environmental Response and Liability Act, if responsible persons fail to take the requested actions in an adequate or timely fashion, the responsible persons may be subject to the following actions:

1. the MPCA may undertake or complete the requested response actions and seek reimbursement from responsible persons for all costs associated with such action; or

2. the responsible person may be subject to an action to compel performance of the requested response action or for injunctive relief to enjoin the release or threatened release.

In either case, responsible persons who fail to take the response actions requested by the MPCA in a manner which is both adequate and timely may be required to pay a civil penalty in an amount to be determined by the court of up to $20,000 per day for each day that the responsible person fails to take reasonable and necessary response actions.

B. YOU ARE HEREBY FURTHER NOTIFIED that if you fail to take the requested response action, the MPCA intends to take one or more of the actions specified in A. above.

VI. REQUIREMENT TO REIMBURSE THE MPCA

YOU ARE HEREBY FURTHER NOTIFIED that all responsible persons whether or not they complete the requested response action may be required to:

A. reimburse the MPCA for all reasonable and necessary expenses it incurs, including all response costs, and administrative and legal expenses in the investigation and/or cleanup of the facilities or in the enforcement measures necessitated by a failure to comply with this request; and

B. pay for any damages to the air, water, or wildlife resulting from the release of a hazardous substance, pollutant or contaminant.

Cynthia C. Jepsen
Cynthia Jepsen, Chairperson

Thomas J. Kalitowski, Director

DATE: 12-15-84

EFFECTIVE DATE: 12-20-84

Minnesota Pollution Control Agency

Exhibit A

REMEDIAL INVESTIGATION, FEASIBILITY STUDY, AND INTERIM REMEDIAL MEASURES

I. INTRODUCTION

Parts II.A., B. and C. of the Request for Response Action (RFRA) to which this Exhibit is appended require Reilly to conduct a Remedial Investigation and Feasibility Study (RI/FS) and Interim Remedial Measures (IRM) at and around the Reilly site. This Exhibit sets forth the requirements for completing the RI/FS and IRM and is appended to and made an enforceable part of the RFRA.

II. PREPARATION AND REVIEW OF SUBMITTALS

Reilly shall submit to the Minnesota Pollution Control Agency Director (MPCA Director) all reports, work plans, well placement, and construction plans, quality control plans, and other submittals required by this Exhibit. All plans require approval of the MPCA Director before implementation.

III. REMEDIAL INVESTIGATION

Reilly shall design and implement a Remedial Investigation (RI) which accomplishes the purposes and meets the requirements of this part. The purposes of the RI are (1) to determine the extent of contamination in the drift, Platteville, and St. Peter aquifers; (2) to determine the extent of subsurface contamination south of the Reilly site; and (3) to provide information and data needed for the selection and implementation of

remedial and removal actions (Response Actions) at and around the Reilly site. The requirements of the RI are set forth in the tasks below.

Reilly shall identify and propose methods in the monthly reports (submitted pursuant to Part II. F. of the RFRA) for any necessary additional RI activities not included in the RI work plan as approved and shall describe in the monthly reports the impact of the additional RI activities. If any additional RI activities will adversely affect work scheduled through the end of the upcoming month or will require significant revisions to the RI work plan as approved, the MPCA project leader shall be notified immediately of the situation followed by a written explanation within ten (10) days of the initial notification.

Task A Submit a Proposed Remedial Investigation Work Plan and Quality Assurance/Quality Control Plan

Within 30 days of the effective date of the RFRA, Reilly shall submit for MPCA Director review and approval, modification, or rejection a Proposed Remedial Investigation Work Plan (RI Work Plan) and a Quality Assurance/Quality Control Plan (QA/QC Plan). At a minimum, the RI Work Plan shall include proposed methodologies to accomplish the following RI activities and shall also include proposed dates and/or time intervals for initiation and completion of the RI activities indicated below, consistent with the timetables set forth in Part III of the RFRA.

1. RI Work Plan

a. Drift, Platteville, and St. Peter Aquifers

The RI work plan shall provide for investigation of the drift,

Platteville, and St. Peter aquifers to determine the extent of contamination from the Reilly site in these aquifers. Existing wells and/or new monitoring wells or piezometers shall be sampled in order to make this determination. The water level in all wells shall be measured and recorded. The RI Work Plan shall specify the wells to be used for this purpose, or, if new wells are to be constructed, specify the locations and design of the new wells.

b. Surficial Contamination South of the Reilly Site

The RI Work Plan shall provide for a series of soil borings within the area south of Lake Street, between a line connecting the end of Monitor Street to Methodist Hospital and a straight-line southward from Taft Avenue, south to Minnehaha Creek. The locations and depths of the soil borings shall be proposed in the RI Work Plan.

2. Sampling and Quality Assurance/Quality Control Plan

Reilly shall submit to the MPCA Director for review and approval, modification, or rejection a proposed Sampling and Quality Assurance/Quality Control (QA/QC) Plan to be utilized in implementing the RI Work Plan. The proposed QA/QC plan shall be consistent with the requirement of the U.S. EPA Contract Laboratory Program. The proposed Sampling and QA/QC Plan shall specify the procedures for:

a. determining parameters to be sampled;

b. field protocol, including procedures for chain of custody, sample collection, and transportation and storage of samples;

c. calibration in terms of accuracy, precision, and references; the QA/QC plan shall also specify the number of times and intervals at which analytical equipment will be calibrated;

d. laboratory analytical methods, including methods for ensuring accurate measurements of data in terms of precision, accuracy, completeness, comparability, and lab sample storage procedures;

e. reporting;

f. internal quality control;

g. audits;

h. preventive maintenance;

i. corrective action; and

j. routine assessment of data precision, representativeness, comparability, accuracy, and completeness of specific measurement parameters involved.

Reilly shall conduct all sampling and laboratory analyses required in this exhibit in accordance with the Sampling and QA/QC Plan as approved by the MPCA Director.

Task B. Conduct Remedial Investigation

Within 30 days of notification of the MPCA Director's approval or modification of the RI Work Plan and the QA/QC plan, Reilly shall initiate the RI. Reilly shall conduct the RI in accordance with the methods and time schedules set forth in the RI Work Plan and QA/QC

plan as approved or modified by the MPCA Director. The RI shall be conducted in accordance with all Federal, State, and Local laws, rules, regulations and ordinances including, but not limited to, Minnesota Rules Parts 4250.2500 - 4250.3000 (1983) for the installation of any ground water monitoring wells.

Task C. Report Results of Remedial Investigation

Within 180 days of initiating the RI, Reilly shall prepare and submit to the MPCA Director a report (RI Final Report) detailing the data and results of the RI. The RI Final Report shall organize and present all data, analytical results, boring logs, and test results. The RI Final Report shall include maps showing contours of contamination in each of the three aquifers, and a discussion of the observed extent and direction of migration of the contaminants.

Task D. Approval of the RI Final Report

The MPCA Director shall review and approve, modify, or reject the RI Final Report. The MPCA Director shall notify Reilly of final approval or modification of the RI Final Report. If the MPCA Director rejects the RI Final Report, the MPCA Director shall specify the deficiencies and reasons for the rejection. Reilly shall correct the deficiencies and resubmit the RI Final Report to the MPCA Director within thirty (30) days of the MPCA Director's notification of rejection. The MPCA Director shall notify Reilly at the time the RI Final Report is approved as to whether the results of the study indicate that gradient control is required in the St. Peter aquifer.

IV. FEASIBILITY STUDIES

As detailed in Tasks A and B below, Reilly shall perform two feasibility studies (FS): (a) an assessment of options for disposing of water from gradient control wells in the Prairie du Chien-Jordan aquifer; and (b) an assessment of gradient control for controlling contamination in the drift, Platteville, and (if so directed by the Director) St. Peter aquifers. Reilly shall conduct the Feasibility Studies in accordance with the National Oil and Hazardous Substance Contingency Plan, 40 CFR Part 300. The feasibility studies shall contain sufficient information and analysis for the MPCA Director to make the determination of the appropriate extent of remedy as specified in 40 CFR § 300.68 (j). The FS specified in (b) above shall use and build upon the information generated by the RI.

Task A. Prairie du Chien-Jordan Gradient Control Well Discharge Feasibility Study

1. FS Plan

Within 30 days of the effective date of the RFRA, Reilly shall submit for the MPCA Director's review and approval, modification, or rejection a plan for conducting a study of the feasibility of discharging 1000 gallons of water per minute from St. Louis Park municipal well 4 (SLP 4). The plan shall provide that the study be based on alternative surface water quality criteria of ten and three micrograms per liter of total PAH, and three hundred nanograms per liter of carcinogenic PAH as a basis for determining limitations for a discharge to surface waters and thus the need for treatment of the discharge. The plan shall identify options for using and discharging water from this well which will be considered in the study, including but not limited to the following:

a. Direct discharge to storm sewer to Lake Calhoun

b. Discharge to Minnehaha Creek

c. Discharge via force main to Mississippi River

d. Treatment and use for drinking water in St. Louis Park or adjoining cities.

e. Use for industrial process or cooling purposes

f. Discharge to sanitary sewer

The plan shall provide for Reilly's participation in a working group made up of representatives of the City of St. Louis Park, other cities whose municipal water supply are considered for utilization of treated water from SLP 4, the Metropolitan Waste Control Commission, and governmental units which have jurisdiction over surface waters identified above.

2. Conduct FS

Within 20 days of approval of the Director of the FS plan, Reilly shall initiate the FS.

3. Detailed Analysis Report

Within 120 days of initiating the study, Reilly shall prepare and submit a Detailed Analysis Report to the MPCA Director on all water discharge/use options analyzed in the FS study. This Detailed Analysis Report shall include the following:

a. Detailed Description of Alternative

Reilly shall prepare and present a detailed description of

each discharge/use option analyzed in the FS study. At a minimum, this description shall include:

(1) a description of the water use and/or disposal technique;

(2) a description of the special engineering considerations required to implement the alternative (e.g. a further feasibility study, alterations to an existing water treatment plant, alterations to an industrial process);

(3) a description of operation, maintenance, and monitoring requirements;

(4) a description of how the alternative could be phased into existing industrial operations or municipal water supply systems;

(5) a summary of the effect of the influx of water into the designated receiving stream, and any limitations on the ability of the receiving stream to accept water at any time of the year;

(6) treatment, if any, required to meet both of the alternative water quality criteria for PAH specified above.

b. Environmental Assessment

Reilly shall prepare and present in the Detailed Analysis Report an environmental assessment for each evaluated water disposal/use

option considered including, at a minimum, an evaluation of each option's environmental effects, an analysis of measures to mitigate adverse effects, physical or legal constraints, and compliance with federal and State regulatory requirements.

c. Cost Analysis

Reilly shall analyze and present in the Detailed Analysis Report a detailed breakdown of the present value capital cost and annualized capital costs of implementing each option evaluated as well as the present value annual operating and maintenance costs. The costs shall be presented as both a total cost and an equivalent annual cost.

d. Recommend Disposal/Use Option

Reilly shall recommend in the Detailed Analysis Report a use/discharge option, or combination of related, compatible options, together with a conceptual design of the recommended option which Reilly determines should be implemented at SLP 4.

The conceptual design shall include:

a location map of all facilities involved in the conceptual plan;

if any major construction is involved, a conceptual plan view drawing of the project site showing general locations for project actions and facilities;

conceptual layouts (plan and cross sectional views where appropriate) for the individual facilities, other items to be installed, or actions to be implemented;

conceptual design criteria and rationale;

a description of types of equipment required, including approximate capacity, size, and materials of construction;

process flow sheets, including chemical consumption estimates and a description of the process;

a description of unique structural concepts for facilities;

a description of operation and maintenance requirements;

a discussion of potential construction problems;

right-of-way requirements;

a description of technical requirements for environmental mitigation measures;

additional engineering data required to proceed with design;

a discussion of permits that are required pursuant to other environmental statutes, rules and regulations;

order-of-magnitude implementation cost estimate and annual O&M cost estimates;

preliminary project schedule.

4. Acceptance of Recommended Use/Discharge Option and Conceptual Design

The MPCA Director will review the Detailed Analysis Report for Gradient Control water use and discharge and the water use/discharge option recommended by Reilly and will approve, modify, or reject the recommended water use/discharge option. If the MPCA Director approves or modifies the recommended alternative, and conceptual design, the MPCA Director will so notify Reilly.

If the MPCA Director rejects the recommended option and conceptual design, Reilly shall recommend for review by the MPCA Director another option and conceptual design and shall develop and submit its proposal to the MPCA Director within thirty (30) days after receiving notice that the MPCA Director has rejected the originally recommended option and conceptual design.

Task B. Drift, Platteville, and St. Peter Gradient Control Feasibility Study

1. FS Plan

Within 30 days of approval by the MPCA Director of the Remedial Investigation Report, Reilly shall submit to the MPCA Director for review and approval, modification, or rejection a plan for a feasibility study (FS) of gradient control in the drift and Platteville aquifers. In addition, if the MPCA Director has notified Reilly that the extent of contamination in the St. Peter aquifer warrants gradient control, Reilly shall include the St. Peter aquifer in this study. The plan shall provide that the study include a

determination of the number, locations, and pumping rates of gradient control wells in each aqufier. In addition, the plan shall provide that the study include a determination of the most feasible means of disposing of water from the wells similar to the study performed in the Prairie du Chien-Jordan aquifer, except that treatment for drinking water need not be considered.

2. Study

Within 20 days of approval of the MPCA Director of the plan, Reilly shall initiate the FS.

3. Detailed Analysis Report

Within 90 days of initiating the FS, Reilly shall prepare and submit a Detailed Analysis Report to the MPCA Director on all drift-Platteville (and St. Peter) gradient control alternatives analyzed in the FS. This Detailed Analysis Report shall include the following:

a. Detailed description of alternative.

Reilly shall prepare and present a detailed description of each gradient control alternative analyzed in the FS. At a minimum, this description shall include as applicable:

(1) a description of the gradient control alternative;

(2) a description of the special engineering considerations required to implement the alternative (e.g. a further feasibility study, alterations to an industrial process);

(3) a description of operation, maintenance, and monitoring requirements;

(4) a description of how the alternative could be phased into existing industrial operations;

(5) a summary of the effect of the influx of water into the designated receiving stream, and any limitations on the ability of the receiving stream to accept water at any time of the year;

(6) treatment, if any, required to meet both of the alternative water quality criteria for PAH specified above.

b. Environmental Assessment

Reilly shall prepare and present in the Detailed Analysis Report an environmental assessment for each evaluated gradient control alternative considered including, at a minimum, an evaluation of each alternative's environmental effects, an analysis of measures to mitigate adverse effects, physical or legal constraints, and compliance with federal and State regulatory requirements.

c. Cost Analysis

Reilly shall analyze and present in the Detailed Analysis Report a detailed breakdown of the present value capital cost and annualized capital costs of implementing each alternative evaluated as well as the present value annual operating and maintenance costs. The costs shall be presented as both a total cost and an equivalent annual cost.

d. Recommend Gradient Control Alternative

Reilly shall recommend in the Detailed Analysis Report a gradient control alternative, or combination of related, compatible alternatives, together with a conceptual design of the recommended alternative which Reilly determines should be implemented in the drift, Platteville, and, if so notified by the Director, the St. Peter aquifers.

The conceptual design shall include:

a location map of all facilities involved in the conceptual plan;

a conceptual plan view drawing of the project site(s) showing general locations for project actions and facilities;

conceptual layouts (plan and cross sectional views where appropriate) for the individual facilities, other items to be installed, or actions to be implemented;

conceptual design criteria and rationale;

a description of types of equipment required, including approximate capacity, size, and materials of construction;

process flow sheets, including chemical consumption estimates and a description of the process;

a description of unique structural concepts for facilities;

a description of operation and maintenance requirements;

a discussion of potential construction problems;

right-of-way requirements;

a description of technical requirements for environmental mitigation measures;

additional engineering data required to proceed with design;

a discussion of permits that are required pursuant to other environmental statutes, rules and regulations;

order-of magnitude implementation cost estimate and annual O&M cost estimates;

preliminary project schedule.

4. Acceptance of Recommended Use/Discharge Alternative(s) and Conceptual Design(s)

The MPCA Director will review the Detailed Analysis Report for drift-Platteville (and St. Peter) Gradient Control and the drift-Platteville (and St. Peter) gradient control alternative(s) recommended by Reilly and will approve, modify, or reject the recommended gradient control alternative(s). If the MPCA Director approves or modifies the recommended alternative, and conceptual design, the MPCA Director will so notify Reilly.

If the MPCA Director rejects the recommended alternative(s) and conceptual design(s), Reilly shall recommend for review by the MPCA Director another alternative(s) and conceptual design(s) and shall

develop and submit its proposal to the MPCA Director within thirty (30) days after receiving notice that the MPCA Director has rejected the originally recommended alternative and conceptual design.

V. INTERIM REMEDIAL MEASURES

Reilly shall undertake interim remedial measures (IRM) intended to remove contaminants at the source and to prevent further migration of contaminants between aquifers. The interim remedial measures shall include pumping of W23 and investigation and reconstruction or abandonment of multi-aquifer wells.

Task A. Reconstruct and Pump W23

1. IRM Plan

Within 60 days from the effective date of the RFRA, Reilly shall submit to the MPCA Director for review and approval, modification, or rejection a plan for reconstruction and pumping of W23 (the deep well used as a water supply by Reilly). The IRM Plan shall propose at a minimum removal of the existing 10 inch casing, completion of the well with a minimum casing diameter of 6 inches, and connection of the well to the sanitary sewer.

2. Conduct IRM

Within 15 days of the approval of the IRM Plan by the Director, Reilly shall begin reconstruction of the W23.

3. Pumping

Within 75 days of beginning construction, Reilly shall complete

reconstruction of W23 and shall begin pumping and continue to pump W23 at a rate of 50 gallons per minute.

Task B. Multi-aquifer Well Investigation and Reconstruction

1. IRM Plan

Within 60 days of the effective date of the RFRA, Reilly shall submit to the MPCA Director for review and approval, modification, or rejection an IRM Plan for investigation of the wells listed below to determine if they allow contaminated water to flow between aquifers in the well bore. The IRM Plan shall specify at a mimimum that the following investigative methods be used in the investigation: static water level measurements, water quality monitoring, spinner logging, caliper logging, and E- or gamma logging. Additional techniques, such as down-hole TV logging may also be proposed.

The following wells shall be investigated:

a. W29 — Flame Industries
b. W35 — Burdick Grain Co.
c. W40 — Minnesota Rubber
d. W45 and 46 — S & K Products
e. W49 — Strom Block
f. W67 — Blacktop Service
g. W107 — Interior Elevator

2. IRM Investigation and Report

Within 240 days of approval by the MPCA Director of the IRM Plan,

Reilly shall complete investigation of the wells listed above, and shall submit a report to the MPCA Director for review and approval, modification, or rejection. This report shall summarize the results of the investigation. If the MPCA Director rejects the report, the MPCA Director shall specify the deficiencies and reasons for the rejection. Reilly shall correct the deficiencies and resubmit the report to the MPCA Director within thirty (30) days of the MPCA Director's notification of rejection.

3. Abandonment or Reconstruction

If the MPCA Director determines that information gathered in the investigation required by this task indicates that any of the wells investigated displays interaquifer flow of water which exceeds drinking water criteria (as referenced in Exhibit C) for PAH, the MPCA Director may notify Reilly that it must reconstruct or abandon the affected well. In making this determination, the MPCA Director will consider: the rate of multi-aquifer flow, the quality of water being leaked; the likely fate and impacts of any leaking contaminants, considering ground water flow and use patterns in the aquifer(s) of concern and the impact of any gradient control wells; and the cost of sealing or abandoning the leaking well. If Reilly abandons an active well, it shall provide an alternative water supply which provides water of equivalent or better quality and quantity at a cost to the owner of the affected well no greater than that of pumping ground water from the affected well. Upon such notification by the MPCA Director, Reilly shall complete the required reconstruction or abandonment within 90 days of the notification.

Exhibit B

RESPONSE ACTION PLAN, RESPONSE ACTION IMPLEMENTATION, AND CONTINGENCIES

I. INTRODUCTION

Part II. D. and E. of the Request for Response Action (RFRA), to which this Exhibit is attached, requires Reilly to prepare a Response Action Plan (RAP) and to implement Response Actions (RA's) and a monitoring program at and around the Reilly site. A separate RAP shall be prepared and implemented for the following: (a) gradient control in the Prairie du Chien-Jordan aquifer; (b) gradient control in the drift, Platteville, and, if required, St. Peter aquifers; (c) drinking water treatment; and (d) response action to meet any contingency described herein. This Exhibit sets forth the requirements for preparing each RAP and implementing the RA's described herein, and is appended to and made an integral and enforceable part of the RFRA. The development of the RAPs and implementation of the RA's shall be based on the Remedial Investigations and Feasibility Studies required by Exhibit A to the RFRA.

II. PREPARATION AND REVIEW OF SUBMITTALS

Reilly shall submit to the Minnesota Pollution Control Agency Director (MPCA Director) all reports, work plans, well placement, and construction plans, quality assurance/quality control plans, and other submittals required by this Exhibit. All plans require approval of the MPCA Director before implementation.

III. RESPONSE ACTION PLANS

Reilly shall prepare proposed RAP's which accomplish the purposes and meet the requirements of this part. Each RAP shall be submitted to the MPCA Director for review and approval, modification, or rejection as specified below. The purpose of each RAP is to provide a detailed design of

RA's which, upon implementation, will protect the public health, welfare, and the environment from releases of hazardous substances from the Reilly site.

Task A. Gradient Control in the Prairie du Chien-Jordan Aquifer

1. Response Action Plan

Within 45 days of approval by the MPCA Director of the Prairie du Chien-Jordan Gradient Control Detailed Analysis Report specified in Part IV of Exhibit A, Reilly shall submit to the MPCA Director for review and approval, modification, or rejection a RAP for a gradient control well system capable of maintaining an annual average flow rate of 750 gallons per minute from SLP 4. The RAP shall propose at least four new monitoring wells in the Prairie du Chien-Jordan aquifer. As part of the RAP, Reilly shall cooperate with the city of St. Louis Park in amending the city's pending application for an NPDES permit for the discharge from SLP 4 unless the MPCA Director has determined that a feasible usage for the water exists which does not require a discharge to surface waters.

The RAP shall propose a schedule for implementation of the gradient control well system.

2. Response Action Implementation

Within 15 days of receipt of approval or modification of the RAP by the MPCA Director and issuance of all necessary permits and approvals, Reilly shall begin construction of the gradient control system, including monitoring wells. The system shall be constructed in accordance with the schedule as contained in the RAP as approved or modified by the MPCA Director. Following approval of the completed

system by the MPCA Director, Reilly shall begin pumping and continue to pump the wells at the rate specified in the RAP as approved by the MPCA Director.

3. Monitoring

All monitoring required under this task shall be conducted in accordance with the Sampling and Quality Assurance/Quality Control Plan required by Task D. of this Exhibit, as approved or modified by the MPCA Director. Beginning at the end of the next calendar quarter following completion of the gradient control well system, Reilly shall sample the following wells at the indicated intervals:

a. quarterly: Methodist Hospital, SLP 6 and 7 or 9

b. semiannually: Minikahda Golf Course, E 2 and 13, H 3 and 6, SLP 14 and 16, and all monitoring wells installed in conjunction with the gradient control system.

c. annually: SLP 5, E 3 and 15, W40, W119, and W70;

In addition, water level measurements shall be taken quarterly in all wells referenced in a. through c. above, W112, W32, SLP 8 and 10, and E 4 and 7. Results of monitoring shall be included in the monthly report submitted to the MPCA as required by Part II. F. of the RFRA.

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* The following prefixes are used in this section and elsewhere in this exhibit: municipal wells, SLP=St. Louis Park, E=Edina, H=Hopkins, M=Minnetonka; other wells, W and P are project designations used by the United States Geological Survey.

Task B. Gradient Control in the Drift-Platteville [and St. Peter] Aquifer

1. RAP

Within 45 days of approval by the MPCA Director of the Drift-Platteville [and St. Peter] Gradient Control Detailed Analysis Report specified in Part IV of Exhibit A to the RFRA, Reilly shall submit to the MPCA Director for review and approval, modification, or rejection a RAP for a gradient control well system in the above aquifers. The system shall be designed to meet the pumping rates and have the number of monitoring wells specified in the Drift-Platteville [and St. Peter] Gradient Control Detailed Analysis Report as approved or modified by the MPCA Director. As part of the RAP, Reilly shall submit an application for any necessary NPDES permits for the discharges unless the MPCA Director has determined that a feasible usage for the water exists which does not require a discharge to surface waters. In addition, the RAP shall contain plans for treatment of discharged water if required to meet applicable discharge criteria, a schedule for implementation of the gradient control well system, and a monitoring plan for the first year of operation.

2. Response Action Implementation

Within 15 days of receiving approval of the plan by the MPCA Director and all necessary permits and approvals, Reilly shall begin construction of the gradient control system, including monitoring wells. The system shall be constructed in accordance with the

schedule as contained in the RAP approved or modified by the MPCA Director. Following approval of the completed system by the MPCA Director, Reilly shall begin pumping and continue to pump the wells at the rate specified in the plan as approved by the MPCA Director.

3. Monitoring

All monitoring required under this task shall be conducted in accordance with the Sampling and Quality Assurance/Quality Control Plan required by Task D. of this Exhibit, and with monitoring plans required by this part as approved or modified by the MPCA Director. By 270 days after the drift-Platteville, [and St. Peter] gradient control system is completed, Reilly shall submit to the MPCA Director for review and approval, modification, or rejection a monitoring plan for assessing the performance of the drift-Platteville [and St. Peter] gradient control system. The plan shall provide that a minimum of twenty new or existing wells in each aquifer be sampled for phenolics and PAH; of these twenty wells, five shall be located at least one and one-half miles from the site. The plan shall also provide for installation of additional wells located further downgradient of the site if monitoring wells initialy found outside the zone of contamination are found in a subsequent sampling to be contaminated. These wells must be installed and ready to sample by the next sampling event after this level of contamination is found. Beginning one year after the gradient control system is completed, Reilly shall sample in accordance with this plan as approved or modified by the MPCA Director. Results of monitoring shall be included in the monthly report submitted to the MPCA as required by Part II. F. of the RFRA.

Task C. Drinking Water Treatment at SLP 15/10

1. Response Action Plan

Within 45 days of the effective date of the RFRA, Reilly shall submit to the MPCA Director for approval, modification, or rejection a plan, including a schedule for completion of each stage of construction of the treatment system, for granular activated carbon (GAC) treatment of water from St. Louis Park municipal wells 15 and 10. The plans shall specify a GAC treatment plant with all related piping and appurtenances, and a building to house the treatment plant, in accordance with the following criteria:

- o primary feed from SLP 15, with SLP 10 as an alternative feed;
- o system capable of treating up to 1000 gallons of water per minute
- o GAC system capable of removing PAH to below 2.8 nanograms per liter (ng/l) initially, and to below drinking water criteria as defined in Exhibit C to this RFRA for a period of at least two years without carbon change;
- o building to be architecturally compatible with existing well structures at site and sized to house additional carbon columns if necessary to achieve above carbon change interval;
- o system to include minicolumns to be used to predict PAH breakthrough and to test the effectiveness of carbon from different suppliers;

2. Response Action Implementation

Within 30 days of approval by the MPCA Director of the GAC system design, Reilly shall initiate construction of the GAC system. The system shall be constructed in accordance with the schedule contained in the RAP as approved or modified by the MPCA Director.

3. Completion and System Operation

Within 5 days of approval of the completed GAC system by the MPCA Director, Reilly shall immediately commence testing of the system for a two week period with treated water from the system discharged to the sanitary sewer. During this testing period, untreated water and treated water shall be monitored in accordance with 4. below. Within 10 days of completing the test period, Reilly shall submit to the MPCA Director a report on the performance of the GAC treatment system during the period of testing. This report shall include analytical results, flow rates, pressure readings, observations of the operator, and other information as necessary for a thorough evaluation of the performance of the system. The MPCA Director will review this report and will either approve use of the GAC system or specify a further period of testing, a modification of the system, or other action as appropriate. Within 5 days of approval by the MPCA Director of the testing of the GAC system, Reilly shall connect the GAC system to the municipal water distribution system and commence operation. Reilly shall operate the GAC system at SLP 15 and SLP 10 until all samples taken at the wellhead for each of the previous five consecutive years are below all drinking water criteria for PAH and below the advisory level for each of the previous three consecutive years. At least two of these samples, or two additional samples, taken at least one year apart, must be monitored for the extended list of PAH in part V. of Exhibit C of this RFRA. A sample which yields results above any drinking water criterion or advisory level may be excluded from the determination above if a duplicate sample or all additional samples taken not more than three

weeks after the sample in question is taken yield results below any drinking water criterion or advisory level, respectively.

4. Monitoring

All monitoring required under this Task shall be conducted in accordance with the sampling and Quality Assurance/Quality Control Plan required by Task D. of this Exhibit, as approved or modified by the MPCA Director.

a. Treated water from the GAC system shall be monitored as follows:

(1) During the testing period prior to hookup, Reilly shall monitor six times.

(2) During the first month following approval of the system and connection to the municipal drinking water distribution system, Reilly shall monitor twice weekly. Following review of the analytical results, the MPCA Director may determine that the system is operating properly, and authorize Reilly to assume the routine monitoring frequency described in a.(3) below; or, if the determination is made that the results do not indicate proper operation of the system, may require Reilly to continue twice weekly monitoring for a period of time not to exceed two months or to remove the GAC system from the municipal distribution system and conduct further testing of the system, modification of the system, or other action as in 3. above.

(3) Routine monitoring shall be monthly until the carbon has been replaced twice. If advisory level or replacement level results are obtained during the first year of operation of the system, Reilly shall immediately notify the MPCA Director and shall conduct such additional monitoring, testing, modification of the system, or other action as may be required by the MPCA Director.

(4) Routine monitoring after two carbon changes shall be quarterly, unless the MPCA Director determines that the observed service life of the carbon is too short to permit this frequency, in which case the MPCA Director will notify Reilly of the required monitoring frequency.

(5) If any monthly or quarterly sample exceeds the advisory level, another sample shall be taken immediately and analyzed. If this second sample yields comparable results, the frequency of analysis shall increase to semimonthly until three consecutive results below the advisory level are obtained.

(6) If the result of monitoring any sample is found to exceed the replacement level, another sample shall be taken immediately. If the analytical result of the second sample exceeds the advisory level but is less than the replacement level, Reilly shall monitor as specified in a.(5) above. If the analytical result of the second sample exceeds the replacement level, the system shall be shut down and the carbon replaced with fresh carbon. Following replacement of carbon, treated water shall

be monitored weekly for one month, and in accordance with the monitoring requirements of a.(3) and (4) above thereafter.

b. Untreated water from SLP 10 or 15 shall be monitored at the well head at the same time treated water from the GAC system is monitored at the following intervals:

(1) During the testing period prior to hookup, untreated water shall be monitored each time treated water is monitored.

(2) During the first month after connection to distribution system, untreated water shall be monitored weekly.

(3) After the MPCA Director has approved routine monitoring of treated water, during the first two carbon fills in the GAC system, routine monitoring of untreated water shall be semi annually.

(4) After two carbon changes in the GAC system, untreated water shall be monitored annually.

(5) If the treatment system is located downstream of the sand filter, water shall also be monitored at the point of entry to the treatment system at the same intervals and at the same time as samples of untreated water are taken in accordance with b.(1) and b.(2) above.

c. When minicolumns are used to predict breakthrough of the carbon in use in the treatment system or for testing carbons from suppliers other than the supplier of the carbon in use in the treatment system,

Reilly shall monitor minicolumns monthly until breakthrough of PAH occurs. Carbon shall then be replaced in the minicolumns and again monitored monthly until breakthrough occurs.

d. At least one sample of treated water from the GAC system per year shall be monitored for the extended list of PAH in part V. of Exhibit C. of this RFRA, using gas chromatography/mass spectroscopy (GC/MS). During this extended analysis, any compounds, other than those routinely analyzed for, which are detected shall be identified and quantified if possible using a mass spectral library which contains extensive spectra of PAH compounds such as the NBS mass spectral library.

5. Excessive Carbon Consumption

If, during the first five years of operation of the GAC system, it is necessary to replace carbon due to PAH breakthrough more often than once in any two year span, the MPCA Director will notify Reilly that it must provide additional filtration at the GAC system. Within 90 days of receiving such notification, Reilly shall submit to the MPCA Director for review and approval, modification, or rejection a plan for installation of additional carbon filtration. Within 90 days following approval of the plan by the MPCA Director, Reilly shall complete installation of the additional carbon filtration in accordance with the plan as approved or modified by the MPCA Director.

Task D. Sampling and Quality Assurance/Quality Control Plan

Within 30 days of the effective date of the RFRA, Reilly shall submit to the MPCA Director for review and approval, modification, or rejection a

proposed Sampling and Quality Assurance/Quality Control (QA/QC) Plan to be utilized during implementation of the RA's, during long term monitoring of the effectiveness of the implemented RA's, and during other monitoring required by this exhibit. The proposed QA/QC plan shall be consistent with the requirement of the U.S. EPA Contract Laboratory Program. The proposed Sampling and QA/QC Plan shall specify the procedures for:

1) determining parameters to be sampled;

2) field protocol, including procedures for chain of custody, sample collection, and transportation and storage of samples;

3) calibration in terms of accuracy, precision, and references; the QA/QC plan shall also specify the number of times and intervals at which analytical equipment will be calibrated;

4) laboratory analytical methods, including methods for ensuring accurate measurements of data in terms of precision, accuracy, completeness, comparability, and lab sample storage procedures;

5) reporting;

6) internal quality control;

7) audits;

8) preventive maintenance;

9) corrective action; and

10) routine assessment of data precision, representativeness, comparability, accuracy, and completeness of specific measurement parameters involved.

Reilly shall conduct all sampling and laboratory analyses required in this Exhibit in accordance with the Sampling and QA/QC Plan as approved by the MPCA Director.

Task E. Monitoring for Contingency

All monitoring required under this task shall be conducted in accordance with the sampling and Quality Assurance/Quality Control Plan required by Task D. of this Exhibit, as approved or modified by the MPCA Director. In addition to monitoring conducted in compliance with other tasks contained in this Exhibit, Reilly shall sample and measure water levels in the following wells, beginning 90 days after the effective date of the RFRA, at the indicated intervals:

annually: SLP 11, 12, 13, 16, and W105

annually: W38 (water level only)

semiannually: SLP 3, W14, W33, W24, W133, W129, W122, P116

Task F. Contingent Actions

If any of the following occurs, the MPCA Director will notify Reilly that it must undertake the indicated contingent action. Upon such notification by the MPCA Director, Reilly shall within 90 days submit to the MPCA Director for review and approval, modification, or rejection a plan and schedule for implementing the indicated contingent action, including plans for necessary water treatment and new wells. Following approval or modification of the plan by the MPCA Director, Reilly shall

implement the plan in accordance with the schedule as approved or modified by the MPCA Director.

1. Drinking Water Treatment. If an active Prairie du Chien-Jordan, Mt. Simon-Hinckley, or St. Peter municipal drinking water well (except SLP 10/15) is found to exceed drinking water criteria for PAH specified in Exhibit C to the RFRA, Reilly shall undertake a sampling program as directed by the MPCA Director. If this monitoring indicates that the well is contaminated, Reilly shall submit plans for treatment of the water or for providing an alternative water supply. In addition, if the plan submitted by Reilly leaves the well out of service, Reilly shall assess the effect on contaminant movement within the aquifer of leaving the well out of service and submit a plan for dealing with this altered contaminant migration.

2. Ineffectiveness of gradient control well systems. If monitoring of any gradient control well system indicates that additional gradient control wells are necessary to contain the spread of contaminants, Reilly shall submit a plan for additional wells.

3. NPDES permit limitations for PAH or phenolics are exceeded. In the event monitoring of discharge from Methodist Hospital, the Methodist Hospital-Control Data Well or from any gradient control well which is discharged to surface water indicates that the concentration of PAH or phenolics exceeds limitations in the applicable NPDES permit (if any are specified), Reilly shall undertake a monitoring program as directed by the MPCA Director. If this program indicates that the well will likely continue to exceed applicable NPDES permit limitations, Reilly shall submit a plan for treatment of the discharge.

EXHIBIT C

I. Introduction

The Request for Response Action (RFRA), to which this Exhibit is attached, requires Reilly to conduct response actions at and around the Reilly site. This exhibit contains definitions of terms used in this RFRA and/or exhibits attached thereto, and lists of PAH compounds required to be analyzed pursuant to the Response Action Plans contained in Exhibit B of this RFRA.

II. Definitions

In drinking water which has been treated to remove PAH or in water from an active drinking water well which is monitored in order to determine the need to provide treatment, drinking water criteria and advisory level are defined as follows:

	Sum of concentrations of carcinogenic PAH listed in III.A. below.	Sum of concentrations of other PAH listed in III.B. below.	Sum of concentrations of benzo(a)pyrene and debenz(ah)anthracene.
Drinking Water Criteria	28 ng/l	280 ng/l	5.6 ng/l
Advisory Level	15 ng/l	175 ng/l	3.0 ng/l or lowest quantifiable concentration for analytical method used, (but less than 5.6 ng/l) whichever is greater.

III. List of PAH to be Used for Compliance Monitoring as Required by this RFRA

A. Carcinogens:

benz(a)anthracene
dibenz(ah)anthracene
benzo(b)fluoranthene
benzo(a)pyrene
quinoline *
indeno(1,2,3,cd)pyrene
chrysene
benzo(ghi)perylene
benzo(j)fluoranthene

* When quinoline is the only carcinogen detected in a given sample analysis, it shall be regulated and limited as "other PAH."

B. Other PAH:

indene
2,3-dihydroindene
naphthalene
1-methylnaphthalene
2-methylnaphthalene
biphenyl
acenaphthylene
acenaphthene
fluorene
phenanthrene
anthracene
fluoranthene
pyrene
benzo(k)fluoranthene
benzo(e)pyrene
perylene
acridine
carbazole
2,3-benzofuran
dibenzofuran
benzo(b)thiophene
dibenzothiophene

IV. Other Carcinogenic PAH

The following PAH are known to be carcinogenic, and shall be included in the calculation of total carcinogenic PAH if they are detected in any measurement required by this RFRA:

dibenz(ae)pyrene
dibenz(ah)pyrene
dibenz(ai)pyrene
7,12-demethylbenz(a)anthracene
dibenz(ac)anthracene
3-methylcholanthrene
benzo(c)phenanthrene

V. Non-regulated Compounds

The following PAH compounds have not been detected in significant amounts during sampling at the site, and need not be routinely measured nor included in the calculation of total PAH. However, whenever extended analysis of a sample is conducted in order to scan for compounds not routinely sampled, the following compounds shall be measured and reported, although they need not be included in the measurement of total PAH in a compliance monitoring measurement:

4,5,9,10-tetrahydropyrene
triphenylene
methylbenzofuran
phenanthridine
isoquinoline

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

December 18, 1984

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

Edward J. Schwartzbauer
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, MN 55402

Re: MPCA Board Action Regarding Reilly Tar & Chemical Corporation

Dear Mr. Schwartzbauer:

As you know, the Minnesota Pollution Control Agency (MPCA) issued at its meeting today the Request for Response Action (RFRA) against Reilly which had been recommended by the MPCA staff. This letter responds to your requests on the phone last Wednesday and yesterday for confirmation of the date which the State would consider the trigger for seeking the imposition of civil penalties against Reilly under the Minnesota Environmental Response and Liability Act (MERLA).

I understand that Dale Wikre, Division Director for Solid and Hazardous Waste, orally informed Carl Lesher, Reilly Vice-President, that the trigger date for the imposition of civil penalties usually is either the date of issuance of a Determination of Inadequate Response by the MPCA Board or, if no such determination is made, the date on which a responsible person first fails to take a response action requested by the MPCA in the RFRA. In addition, Mr. Wikre told Mr. Lesher that, unless Reilly has stated that it is unwilling to take response actions as requested or to negotiate a Consent Order with the State, the failure to enter into a Consent Order by the January 4, 1985, date set forth in part III of the RFRA would not trigger the MERLA penalties. I confirmed this information in my conversations with you yesterday and with Becky Comstock last Friday.

In the RFRA which the MPCA Board issued to Reilly, the first date for response (other than a statement of willingness to negotiate or "Notice of Intent to Comply") is February 4, 1985. Assuming that Reilly does not simply state that it is unwilling to comply with the RFRA, the earliest date we could envision seeking as the trigger date for the imposition of civil penalties against Reilly would be February 4, 1985. Of course, it is our

EXHIBIT C

hope that Reilly, the State, and the other plaintiffs can agree on the terms of an overall Consent Order in the next few weeks. Meanwhile, we intend to seek leave from the Court to amend our complaint to add a count under MERLA for response costs and natural resource damages.

Very truly yours,

Stephen Shakman

STEPHEN SHAKMAN
Special Assistant
Attorney General

SS:mah

cc: Thomas Kalitowski
Dale Wikre
Eldon G. Kaul